

CHARLES E. HULL ET AL.

IBLA 82-808

Decided June 23, 1982

Appeal from decision of Idaho State Office, Bureau of Land Management, declaring unpatented mining claims abandoned and void. I MC 32161 through I MC 32187.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Recordation of Affidavit of Assessment Work or Notice of Intention to Hold Mining Claim -- Mining Claims: Recordation

Under sec. 314 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1744 (1976), the owner of a mining claim located on or before Oct. 21, 1976, must file a notice of intention to hold or evidence of performance of annual assessment work on the claim on or before Oct. 22, 1979, and prior to Dec. 31 of each year thereafter. This requirement is mandatory and failure to comply is deemed conclusively to constitute abandonment of the claim by the owner and renders the claim void.

2. Federal Land Policy and Management Act of 1976: Recordation of Mining Claims and Abandonment -- Mining Claims: Abandonment

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976), is imposed by the statute itself. A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary with authority to waive or excuse noncompliance with the statute, or

to afford claimants any relief from the statutory consequences.

APPEARANCES: William Lyman Belnap, Esq., Boise, Idaho, for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Appeal has been taken on behalf of the owners 1/ of unpatented placer mining claims I MC 32161 through I MC 32187 2/ declared abandoned and void by the April 9, 1982, decision of the Idaho State Office, Bureau of Land Management (BLM), because no proof of labor or notice of intention to hold the claims was filed with BLM in 1980 as required by section 314 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1744 (1976), and 43 CFR 3833.2.

The claims were located between 1950 and 1955. Copies of the notices of location and a proof of labor were filed with BLM October 17, 1979, as required by FLPMA.

Appellants state the claims are situated within the Payette National Forest and that because they had filed a "Notice of Intent to Operate" with the District Ranger of the Forest Service, at Cascade, Idaho, they thought they had complied with all the Federal requirements. They argue that filing of the 1981 proof of labor should indicate to BLM that the claims are not abandoned.

[1] Section 314 of FLPMA requires the owner of unpatented mining claims located prior to October 21, 1976, in addition to filing with BLM a copy of the official record of the notice of location, to file with BLM evidence of assessment work performed on the claim, or a notice of intention to hold the claim, on or before October 22, 1979, and before December 31 of each calendar year thereafter. The statute also provides that failure to file such instruments within the prescribed time periods shall be deemed conclusively to constitute an abandonment of the mining claim by the owner.

[2] Failure to comply with these requirements is conclusively deemed to constitute an abandonment of the claim by the owner and renders the claim void. Lawrence Paul, 63 IBLA 275 (1982); Lynn Keith, 53 IBLA 192, 88 I.D. 369 (1981); 43 U.S.C. § 1744(c) (1976); 43 CFR 3833.4(a). Congress imposed that consequence in enacting FLPMA. The responsibility for complying with the recordation requirements of FLPMA rests with appellants, and this Board has no authority to excuse failure to comply with the statutory requirements of recordation or to afford any relief from the statutory consequences. As the Board stated in Lynn Keith, supra:

1/ The names of the claimants are: Charles E. Hull, James W. Hull, and Keith E. Hull.

2/ The claims involved are Big Elk; The Dude; Silver Dollar; Lucky Lady; Green Tabel Placer Nos. 1, 2, and 3; B.T. #1; and Monazite Nos. 1 through 19.

The conclusive presumption of abandonment which attends the failure to file an instrument required by 43 U.S.C. § 1744 (1976) is imposed by the statute itself, and would operate even without the regulations. See Northwest Citizens for Wilderness Mining Co., Inc. v. Bureau of Land Management, Civ. No. 78-46 M (D. Mont. June 19, 1979). A matter of law, the conclusive presumption is self-operative and does not depend upon any act or decision of an administrative official. In enacting the statute, Congress did not invest the Secretary of the Interior with authority to waive or excuse noncompliance with the statute, or to afford claimants any relief from the statutory consequences. Thomas F. Byron, 52 IBLA 49 (1981).

53 IBLA at 196, 88 I.D. at 371-72.

BLM properly declared appellants' mining claims abandoned and void when no evidence of assessment work or a notice of intention to hold the claims was filed with BLM during 1980, pursuant to FLPMA, and 43 CFR 3833.2.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Gail M. Frazier
Administrative Judge

